

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:

RANDALL SCOTT BAUERLE,
dba Bwerks Luxury Pools LLC, dba Bwerks LLC,

Debtor

BANK OF AMERICA, N.A.,
Movant

v.

RANDALL SCOTT BAUERLE, *dba Bwerks*
Luxury Pools LLC, dba Bwerks LLC, Debtor;
and JOHN PATRICK LOWE, TRUSTEE,
Respondents

CASE NO. 19-11554-TMD-7

CHAPTER 7

JUDGE TONY M. DAVIS

MOTION OF BANK OF AMERICA, N.A.
FOR RELIEF FROM THE AUTOMATIC STAY
(2011 PORSCHE PANAMERA VIN #WP0AC2A70BL090884)

NOTICE

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within fourteen (14) days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Bank of America, N.A. ("Bank of America"), and files this *Motion for Relief from the Automatic Stay* pursuant to 11 U.S.C. § 362(d)(1) for cause and § 362(d)(2) by reason of a lack of adequate protection of Bank of America's rights as a secured creditor and lack of equity.

This Motion is further filed pursuant to Bankruptcy Rule 9014, and constitutes a contested matter thereunder.

1. RANDALL SCOTT BAUERLE, *dba Bwerks Luxury Pools LLC, dba Bwerks LLC* hereinafter referred to as Debtor, filed a Petition for Relief under Chapter 7 of Title 11 U.S.C. on November 13, 2019.

2. Bank of America is a secured creditor of Debtor with respect to that one certain vehicle described as a 2011 PORSCHE PANAMERA VIN #WP0AC2A70BL090884 (the "Vehicle").

3. Debtor purchased the Vehicle pursuant to a Motor Vehicle Retail Installment Sales Contract Simple Finance Charge ("Contract"). A true and correct copy of the Contract is attached hereto as Exhibit "A" and incorporated herein by reference for all purposes. Bank of America is the holder of this Contract.

4. Bank of America's superior security interest is properly recorded on a VINtek Lien and Title Information Report, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated herein by reference for all purposes. Bank of America is unaware of any other liens that exist on the Vehicle.

5. As of December 6, 2019, Debtor has failed to pay Bank of America payments in the amount of \$1,362.06 each, due on September 19, 2019 through November 19, 2019, totaling \$4,086.18, less suspense funds of \$136.20, for a total amount due of \$3,949.98. An additional payment will come due in the amount of \$1,362.06 on December 19, 2019. As of December 6, 2019, the total payoff owed to Bank of America was \$36,166.59.

6. The Debtor lists the Vehicle on his Statement of Intent, but does not elect his intention regarding the Vehicle. A true and correct copy of the Statement of Intent is attached hereto as Exhibit "C" and incorporated herein by reference for all purposes.

7. As stated above, the payoff owed to Bank of America as of December 6, 2019 is \$36,166.59. The NADA Report dated December 6, 2019, reflects a clean retail value of \$33,250.00. A true and correct copy of the NADA Report is attached hereto as Exhibit "D" and incorporated herein by reference for all purposes. There is no equity, and it continues to depreciate in value.

8. Under the circumstances described above, good cause exists for lifting the stay including, but not limited to BANK OF AMERICA's lack of adequate protection.

9. It is respectfully submitted that, under the circumstances, Bank of America is entitled to the granting of an Order Lifting the Automatic Stay so as to repossess the Vehicle, to sell or otherwise dispose of the Vehicle, and to apply the proceeds against the outstanding indebtedness, less all unearned finance charges and less all other charges which have not yet become due and payable, owed by Debtor under the Contract. Without the granting of the relief sought, Bank of America will not have adequate protection of its security interest in the Vehicle.

WHEREFORE, Bank of America respectfully prays for an Order Lifting the Automatic Stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) so as to permit Bank of America to repossess immediately and sell or otherwise dispose of the Vehicle, and to apply the proceeds from the sale or other disposition against the outstanding indebtedness, less all unearned finance charges and less all other charges which have not yet become due and payable, owed by the Debtor under the Contract. Bank of America further prays that the stay be immediately lifted upon entry of an Order Lifting the Automatic Stay notwithstanding FRBP Rule 4001(a)(3) and for such other and further relief, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

By: /s/ Paul Kim
Paul Kim
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ATTORNEYS FOR BANK OF AMERICA, N.A.

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on the December 18, 2019, a true and correct copy of the foregoing document was served upon the following parties via electronic means as listed on the Court's ECF noticing system or by regular first class mail, postage prepaid.

RANDALL SCOTT BAUERLE
121 SPUR 191
BOX 427
SPICEWOOD, TX 78669
DEBTOR

JOHN PATRICK LOWE
2402 EAST MAIN STREET
UVALDE, TX 78801
TRUSTEE

TRAVIS COUNTY
C/O JASON A. STARKS
ASSISTANT COUNTY ATTORNEY
P.O. BOX 1748
AUSTIN, TX 78767
PARTY REQUESTING NOTICE

RON SATIJA
HAJJAR PETERS LLP
3144 BEE CAVES RD
AUSTIN, TX 78746
ATTORNEY FOR DEBTOR

BURNET CENTRAL APPRAISAL DISTRICT
C/O TARA LEDAY
MCCREARY, VESELKA, BRAGG & ALLEN,
P.C.
P.O. BOX 1269
ROUND ROCK, TX 78680
PARTY REQUESTING NOTICE

URBANE HOMES, INC.
C. DANIEL ROBERTS
C. DANIEL ROBERTS, P.C.
1602 E. CESAR CHAVEZ
AUSTIN, TX 78702
PARTY REQUESTING NOTICE

URBANE HOMES, INC.
A. LEE RIGBY
RIGBY SLACK LAWRENCE BERGER &
COMEFDLLC
6836 AUSTIN CENTER BLVD., SUITE 100
AUSTIN, TX 78731
PARTY REQUESTING NOTICE

/s/ Paul Kim

Paul Kim